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38 CFR Ch. I (7–1–13 Edition)

Vermont Avenue, NW.; Washington, DC 20420.

(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137)

[73 FR 58880, Oct. 8, 2008]

§ 59.110 Recapture provisions.

If a facility for which a grant has been awarded ceases to be operated as a State home for the purpose for which the grant was made, the United States shall be entitled to recover from the State which was the recipient of the grant or from the then owner of such construction as follows:

(a) If less than 20 years has lapsed since the grant was awarded, and VA provided 65 percent of the estimated cost to construct, acquire or renovate a State home facility principally for furnishing domiciliary care, nursing home care, adult day health care, hospital care, or non-institutional care to veterans, VA shall be entitled to recover 65 percent of the current value of such facility (but in no event an amount greater than the amount of assistance provided for such under these regulations), as determined by agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated.

(b) Based on the time periods for grant amounts set forth below, if VA provided between 50 and 65 percent of the estimated cost of expansion, remodeling, or alteration of an existing State home facility, VA shall be entitled to recover the amount of the grant as determined by agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated:

Grant amount (dollars in thousands)	Recovery period (in years)
0–250	7
251–500	8
501–750	9
751–1,000	10
1,001–1,250	11
1,251–1,500	12
1,501–1,750	13
1,751–2,000	14
2,001–2,250	15
2,251–2,500	16
2,501–2,750	17
2,751–3,000	18
Over 3,000	20

(c) If the magnitude of the VA contribution is below 50 percent of the estimated cost of the expansion, remodeling, or alteration of an existing State home facility recognized by the Department of Veterans Affairs, the Under Secretary for Health may authorize a recovery period between 7 and 20 years depending on the grant amount involved and the magnitude of the project.

(d) This section does not apply to any portion of a State home in which VA has established and operates an outpatient clinic.

(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137)

§ 59.120 Hearings.

If the Secretary determines that a submission from a State does not meet the requirements of this part, the Secretary will advise the State by letter that a grant is tentatively denied, explain the reasons for the tentative denial, and inform the State of the opportunity to appeal to the Board of Veterans' Appeals pursuant to 38 U.S.C. 7105. Decisions under this part are not subject to the provisions of § 17.133 of this order.

(Authority: 38 U.S.C. 101, 501, 511, 1710, 1742, 7101–7298, 8105, 8131–8137)

§ 59.121 Amendments to application.

Any amendment of an application that changes the scope of the application or changes the cost estimates by 10 percent or more shall be subject to approval in the same manner as an original application.

(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137)

§ 59.122 Withdrawal of application.

A State representative may withdraw an application by submitting to VA a written document requesting withdrawal.

(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137)

§ 59.123 Conference.

At any time, VA may recommend that a conference (such as a design development conference) be held in VA Central Office in Washington, DC, to

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provide an opportunity for the State and its architects to discuss requirements for a grant with VA officials.

(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137)

§ 59.124 Inspections, audits, and reports.

(a) A State will allow VA inspectors and auditors to conduct inspections and audits as necessary to ensure compliance with the provisions of this part. The State will provide evidence that it has met its responsibility under the Single Audit Act of 1984 (see part 41 of this chapter) and submit that evidence to VA.

(b) A State will make such reports in such form and containing such information as the Chief Consultant, Geriatrics and Extended Care, may from time to time reasonably require and give the Chief Consultant, Geriatrics and Extended Care, upon demand, access to the records upon which such information is based.

(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137)

§ 59.130 General requirements for all State home facilities.

As a condition for receiving a grant and grant funds under this part, States must comply with the requirements of this section.

(a) The physical environment of a State home must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.

(b) A State home must meet the general conditions of the American Institute of Architects, or other general conditions required by the State, for awarding contracts for State home grant projects. Facilities must meet all Federal, State, and local requirements, including the Uniform Federal Accessibility Standards (UFAS) (24 CFR part 40, appendix A), during the design and construction of projects subject to this part. If the State or local requirements are different from the Federal requirements, compliance with the most stringent provisions is required. A State must design and construct the project to provide sufficient space and equipment in dining, health services, recreation, and program areas to enable

staff to provide residents with needed services as required by this part and as identified in each resident's plan of care.

(c) State homes should be planned to approximate the home atmosphere as closely as possible. The interior and exterior should provide an attractive and home-like environment for elderly residents. The site will be located in a safe, secure, residential-type area that is accessible to acute medical care facilities, community activities and amenities, and transportation facilities typical of the area.

(d)(1) State homes must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (2009 edition), except that the NFPA requirement in paragraph 19.3.5.1 for all buildings containing nursing homes to have an automatic sprinkler system is not applicable until February 24, 2016 for "existing buildings" with nursing home facilities as of June 25, 2001 (paragraph 3.3.32.5 in the NFPA 101 defines an "[e]xisting [b]uilding" as "[a] building erected or officially authorized prior to the effective date of the adoption of this edition of the *Code* by the agency or jurisdiction"), and the NFPA 99, Standard for Health Care Facilities (2005 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials, incorporated by reference, are available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), Room 1068, 810 Vermont Avenue, NW, Washington, DC 20420 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. (For ordering information, call toll free 1-800-344-3555.)

(2) Facilities must also meet the State and local fire codes.